

**MINUTES
REGULAR BOARD MEETING
THURSDAY, SEPTEMBER 21, 2006, 9:00 A.M.**

Board Members Present at Roll Call: Les Abrams, Gabe Corral, Lee Ann Elliott, Tom Heineman, Cynthia Henry, Sarah Vetault. A quorum was present. Board Members Present After Roll Call: Rob Bolden, Myra Jefferson. Board Members Absent: None. Board Member Resigned: Gaye Rutan.

Also Present at Roll Call: Debb Pearson, Executive Director; Beckie Loar, Regulatory Compliance Administrator; Beth Campbell, Assistant Attorney General. Also Present After Roll Call: Christina Cassetta, Assistant Attorney General, Solicitor General=s Office.

Les Abrams acted as Chairperson.

The Board pledged allegiance to the flag of the United States of America.

Lee Ann Elliott moved that the Minutes of the August 17, 2006, Regular Board Meeting be approved, as amended. Cynthia Henry seconded the motion. The Board voted unanimously in favor of the motion. Lee Ann Elliott moved that the Minutes of the August 31, 2006, Telephonic Special Board Meeting be approved. Cynthia Henry seconded the motion. The Board voted unanimously in favor of the motion.

PUBLIC ANNOUNCEMENTS AND CALL TO PUBLIC

None.

COMPLAINT REVIEW

Review and Action Concerning 2206, Sharon K. Botkin.

Respondent appeared. Staff summary was read. Sarah Vetault moved that the Board find Level I violations and offer respondent a nondisciplinary letter of concern citing the violations. Lee Ann Elliott seconded the motion. The Board voted unanimously in favor of the motion.

Rod Bolden joined the meeting.

Review and Action Concerning 2207, John D. Cole.

Respondent appeared. Staff summary was read. Sarah Vetault moved that the Board find Level I violations and offer respondent a nondisciplinary letter of concern citing the violations. Cynthia Henry seconded the motion. The Board voted

6-1 in favor of the motion. Gabe Corral voted no. Sarah Vetault moved that the Board amend the violations cited in its prior motion. Cynthia Henry seconded the motion. The Board voted unanimously in favor of the motion.

Review and Action Concerning 2208/2210/2212, Kevin W. Watkins; 2209/2211, Travis Thorne.

Complainant appeared. Staff summary was read. Gabe Corral moved that the Board issue a cease and desist letter to each respondent and the matters be referred to the Attorney General for criminal investigation. Cynthia Henry seconded the motion. The Board voted unanimously in favor of the motion.

Informal Hearing Concerning 2065/2066, Antoinette M. Regret.

Respondent appeared. Respondent was sworn in, made statements to the Board and answered the Board's questions. Les Abrams moved that the Board find Level II violations and offer respondent a due diligence consent letter citing violations and requiring education. Lee Ann Elliott seconded the motion. The Board voted unanimously in favor of the motion.

Review and Action Concerning 2205, April R. Dannenberg.

Respondent appeared. Staff summary was read. Tom Heineman moved that the Board find no violations and dismiss the complaint. Rod Bolden seconded the motion. The Board voted unanimously in favor of the motion.

Review and Action Concerning 2133, Costandine D. Nomicos.

Respondent did not appear. Lee Ann Elliott moved that because respondent's 90-day renewal grace period had expired, the matter be closed to be reopened and considered if respondent reapplies. Tom Heineman seconded the motion. The Board voted unanimously in favor of the motion.

Review and Action Concerning 2154, Jon W. Reeve.

Respondent did not appear. Lee Ann Elliott moved that the Board accept the investigator's report. Tom Heineman seconded the motion. The Board voted unanimously in favor of the motion. Sarah Vetault moved that the Board invite respondent to an informal hearing. Cynthia Henry seconded the motion. The Board voted unanimously in favor of the motion.

Review and Action Concerning 2186, Richard L. Foltz.

Respondent did not appear. Cynthia Henry moved that the Board accept the investigator's report. Lee Ann Elliott seconded the motion. The Board voted unanimously in favor of the motion. Tom Heineman moved that the Board invite respondent to an informal hearing. Lee Ann Elliott seconded the motion. The Board voted unanimously in favor of the motion.

Review and Action Concerning 2057, Todd Michael Breyfogle.

Respondent did not appear. Les Abrams moved that the matter be referred to the Office of Administrative Hearings (OAH) for formal hearing. Sarah Vetault seconded the motion. The Board voted unanimously in favor of the motion.

Review and Action Concerning 2107, Paul G. Masters.

Respondent did not appear. Tom Heineman moved that because respondent's 90-day renewal grace period had expired, the matter be closed to be reopened and considered if respondent reapplies. Sarah Vetault seconded the motion. The Board voted unanimously in favor of the motion.

Review and Action Concerning 2108, Paul A. Botts.

Respondent did not appear. Sarah Vetault moved that the Board accept the signed due diligence consent letter from respondent late. Rod Bolden seconded the motion. The Board voted unanimously in favor of the motion.

Review and Action Concerning 2175, Jose G. Encinas.

Respondent did not appear. Sarah Vetault moved that the matter be referred to the Office of Administrative Hearings (OAH) for formal hearing. Tom Heineman seconded the motion. The Board voted unanimously in favor of the motion.

Review and Action Concerning 2178, Richard L. Abbott.

Respondent did not appear. Sarah Vetault moved that the Board find Level I violations and offer respondent an amended nondisciplinary letter of concern citing violations. Tom Heineman seconded the motion. The Board voted unanimously in favor of the motion.

Review and Action Concerning 2196, Todd J. Stewart.

Sarah Vetault moved that the Board approve Heather R. Bolerjack, certified residential appraiser # 20894, to act as respondent's mentor. Tom Heineman seconded the motion. The Board voted unanimously in favor of the motion.

Review and Action Concerning 2203, Steve A. McReynolds.

Respondent did not appear. Staff summary was read. Lee Ann Elliott moved that the Board find no violations and dismiss the complaint. Rod Bolden seconded the motion. The Board voted unanimously in favor of the motion.

Review and Action Concerning 2204, Gary W. Cannon.

Respondent did not appear. Staff summary was read. Sarah Vetault moved that the matter be tabled until the Board=s November meeting to allow respondent=s 90-day renewal grace period to expire. Tom Heineman seconded the motion. The Board voted unanimously in favor of the motion.

Review and Action Concerning Superior/Appellate Court Case 1CA-CV 05-0868 (98F-0544-BOA), Lawrence D. Bloom.

Respondent did not appear. Elizabeth Campbell updated the Board with the status of respondent=s appeal.

Review and Action Concerning 2214, Lawrence D. Bloom.

Respondent did not appear. Staff summary was read. Sarah Vetault moved that the matter be tabled pending the ruling of the appellant court on respondent's request for a stay. Cynthia Henry seconded the motion. The Board voted unanimously in favor of the motion.

Review and Action Concerning 2215, John K. Senerchia.

Respondent did not appear. Staff summary was read. Gabe Corral moved that the matter be tabled to allow the Assistant Attorney General to contact the mentor. Rod Bolden seconded the motion. The Board voted unanimously in favor of the motion.

Review and Action Concerning 2216, Robert K. Bradfield.

Respondent did not appear. Staff summary was read. Sarah Vetault moved that the Board issue respondent a cease and desist letter and the matter be referred to the Attorney General for criminal investigation. Rod Bolden seconded the motion. The Board voted unanimously in favor of the motion.

Review and Action Concerning 2217, Richard L. Small.

Respondent did not appear. Staff summary was read. Tom Heineman moved that the Board find no violations and dismiss the complaint. Sarah Vetault seconded the motion. The Board voted unanimously in favor of the motion.

Review and Action Concerning 2218, Rodney L. Martensen.

Respondent did not appear. Staff summary was read. Tom Heineman moved that the Board find no violations and dismiss the complaint. Sarah Vetault seconded the motion. The Board voted unanimously in favor of the motion.

Review and Action Concerning 2220, Steven E. Grimes.

Respondent did not appear. Staff summary was read. Sarah Vetault moved that the Board find no violations and dismiss the complaint. Tom Heineman seconded the motion. The Board voted unanimously in favor of the motion.

The Board noted there were no 12-month reviews.

Review and Action Concerning Superior/Appellate Court Case CV-06-4141 (03F-1498-BOA/04F-1782-BOA/04F-1784-BOA), Felicia M. Coplan.

Respondent did not appear. Elizabeth Campbell updated the Board with the status of respondent=s appeal.

APPLICATION FILE REVIEW

Review and Action Concerning Renewal Application of George R. Dorsey, Licensed Residential Appraiser #20480.

Applicant did not appear. Sarah Vetault moved that the Board go into Executive Session for legal advice. Lee Ann Elliott seconded the motion. The Board voted unanimously in favor of the motion. Upon return from Executive Session, Sarah Vetault moved that the Board deny the renewal application of George R. Dorsey, Licensed Residential Appraiser #20480, pursuant to A.R.S. § 32-3631(A)(8). Lee Ann Elliott seconded the motion. The Board voted unanimously in favor of the motion.

BOARD CHAIRPERSON REPORT

Les Abrams complimented the members of the various committees on the exceptional job they did.

EXECUTIVE DIRECTOR REPORT

Debb Pearson reported on the status of the Assistant Attorney General=s assignments; advised no complaint answer dates had been extended by staff; and reported the following complaint status for calendar year 2006 through 8/31/06:

Complaints filed	126
Complaints dismissed	31
Complaints referred to investigation	25
Complaints resolved with nondisciplinary letter of concern	19
Complaints resolved with nondisciplinary letter of remedial action	5
Complaints resolved with disciplinary letter of due diligence	2
Complaints resolved with probation	6
Complaints referred to informal hearing	8
Complaints referred to formal hearing	2
Complaints resolved with suspension	4
Complaints resolved with surrender	1
Complaints resolved with revocation	0

Complaints resolved with cease and desist letters	13
Violation Levels:	
I	22
II	4
III	1
IV	0
V	8

Cynthia Henry left the meeting. A quorum remained.

APPLICATION REVIEW COMMITTEE REPORT

Les Abrams reported the following Arizona appraiser and property tax agent information as of September 18, 2006:

Licensed Residential	1038	
Certified Residential	917	
Certified General	756	
Nonresident Temporary	67	Total 2778
Property Tax Agents	307	

Lee Ann Elliott moved that the Board find application #6098, Shannon L. Conrad, substantively incomplete and that staff request additional information from the applicant. Rod Bolden seconded the motion. The Board voted unanimously in favor of the motion.

Cynthia Henry rejoined the meeting.

Lee Ann Elliott moved that the Board accept the Committee=s recommendations with the exception of application #6203, Raymond L. Ferrier (see attached). Sarah Vetault seconded the motion. The Board voted unanimously in favor of the motion. Tom Heineman recused himself concerning application #6203, Raymond L. Ferrier. Lee Ann Elliott moved that the Board accept the Committee's recommendations concerning application #6203, Raymond L. Ferrier (see attached). Sarah Vetault seconded the motion. The Board voted unanimously in favor of the motion.

APPRAISAL TESTING AND EDUCATION COMMITTEE REPORT

Lee Ann Elliott moved that the Board accept the Committee=s recommendations (see attached). Sarah Vetault seconded the motion. The Board voted unanimously in favor of the motion.

OLD BUSINESS

None.

NEW BUSINESS

Discussion and Action Concerning Approval of Proposed Reciprocal Agreement with the North Carolina Appraisal Board.

Lee Ann Elliott moved that the Board approve the proposed Reciprocal Agreement with the North Carolina Appraisal Board. Sarah Vetault seconded the motion. The Board voted unanimously in favor of the motion.

Discussion and Action Concerning Approval of Proposed Reciprocal Agreement with the Wisconsin Department of Regulation & Licensing.

Lee Ann Elliott moved that the Board approve the proposed Reciprocal Agreement with the Wisconsin Department of Regulation & Licensing. Sarah Vetault seconded the motion. The Board voted unanimously in favor of the motion.

Myra Jefferson joined the meeting.

Discussion and Action Concerning the Viewing of the Appraisal Standard's Board's DVD for Regulators Concerning the 2006 USPAP Revisions.

Lee Ann Elliott moved that the DVD be circulated among the Board members for viewing outside the Board meeting. The motion was withdrawn. Les Abrams moved that additional copies of the DVD be obtained and provided to the Board members for viewing outside the Board meeting. Sarah Vetault seconded the motion. The Board voted unanimously in favor of the motion.

CONFIRMATION OF MEETING DATES, TIMES, LOCATIONS AND PURPOSES

The upcoming Committee and Board meetings were scheduled as follows:

October

18	Application Review Committee	3:00 p.m.
19	Appraisal Testing and Education Committee	8:30 a.m.
19	Board	9:00 a.m.

COMPLAINT REVIEW

Christine Cassetta, Assistant Attorney General, Solicitor General's Office, joined the meeting.

Review and Action Concerning Issues Dealing With Formal Hearing Concerning 06F-5894-BOA, D=Metrid R. James.

Respondent appeared and was represented by his attorney, Craig Lion, Esq. Elizabeth A. Campbell, Assistant Attorney General, represented the State of Arizona. Christina Cassetta, Assistant Attorney General, Solicitor General=s office, advised the Board. The Board, having reviewed the record, heard oral argument on behalf of the parties. Sarah Vetault moved that the Board accept the Administrative Law Judge=s Findings of Fact 1-26, inclusive, with the correction of typographical errors, to read as follows:

FINDINGS OF FACT

1. On March 17, 2006, D'Metrid R. James ("Mr. James") submitted to the Arizona Board of Appraisal ("Board") an application for a real estate appraiser's license ("Application").
2. On April 19, 2006, the Application went before the Application Review Committee for its consideration.
3. The Committee reviewed the Application and documentation Mr. James submitted with the Application and voted to refer the matter to the Board.
4. On April 20, 2006, the Board met and considered the Application. Mr. James was provided notice of the Board meeting and did not appear before the Board. The Board considered the Application and accompanying materials and voted unanimously to deny the Application.
5. On April 21, 2006, the Board issued a letter to Mr. James in which the Board concluded that based on A.R.S. §§ 32-3611(D) and 3631(A)(4), Mr. James did not meet the qualifications for licensure based on a felony conviction and his ongoing probation. See Exhibit 4.
6. In the above-mentioned letter, the Board stated:
 - (1) The Board's statutes at A.R.S. § 32-3611(D) require that all Applications be examined for "honesty, truthfulness, reputation and competency." That statute requires the applicant to provide information on felony convictions. The Board denied your application under A.R.S. § 32-3611(D) because it determined that the felony conviction and ongoing probation impacted your reputation.
 - (2) The Board denied your application under A.R.S. § 32-3631(A)(4) because of concerns that the felony conviction for aggravated driving under the influence in association with your prior criminal history are convictions which may indicate a substance problem that could potentially impact your ability to develop and communicate appraisals.
7. Subsequently, Mr. James appealed the Board's denial of the Application, resulting in the instant hearing being set before the Office of Administrative Hearings.
8. Mr. James answered "Yes" to Question 11 on the Application, which asked:
Have you ever been charged with, convicted of or pled nolo contendere (Sic) (No contest) to a criminal offense, other than a minor traffic violation, in any state or federal court? **If yes, you must provide copies of court documents such as the complaint, pleadings and final order(s). You must answer "yes" even if you received a pardon, the conviction was set aside, the records were expunged, your civil rights restored, and whether or not sentence was imposed or suspended.**
9. The directions on the Application with respect to Question 11 *et seq.* provide:
If you answer "YES" to any question below, please provide a signed, detailed statement describing the facts and circumstances, including the date, time and location of the incident or event. In addition, provide the documents identified in the Requirements for Submitting Application for Licensed Residential Appraiser.

10. During the application process, Mr. James disclosed to the Board that in 2001 he was convicted of Driving Under the Influence ('DUI') and had two convictions for Possession of Marijuana, and in 2004, he was convicted of Aggravated Driving Under the Influence.

11. On December 5, 2001, in *State of Arizona v. D'Metrid James*, Maricopa County Superior Court No. CR2001-009462, Mr. James was found guilty of Amended Count 1: Possession of Marijuana, a class 1 misdemeanor, nondangerous and nonrepetitive offense, in violations of A.R.S. §§ 13-3401, 13-3405, 13-3418, 13-707, 13-802, committed on June 21, 2001.

12. The Court imposed suspension of sentence, for a period of 24 months, placed Mr. James on summary probation under the supervision of the Adult Probation Department. The Court ordered Mr. James to pay a monthly probation fee of \$20.00, to pay a \$750.00 fine, pay a fee to the clerk of the Court in the sum of \$20.00, to complete 24 hours of community service beginning January 1, 2002, to complete 8 hours of drug education and provide proof of completion to the Court within ninety days of sentencing.

13. On January 23, 2001, in *State of Arizona v. D'Metrid James*, Maricopa County Superior Court No. CR2001-015938, Mr. James was found guilty of Count 1: Driving Under the Influence of Intoxicating Liquor, a class 1 misdemeanor, nondangerous and nonrepetitive offense, in violation of A.R.S. §§ 28-1381(A), 18-144, 28-3304, 28-3305, 28-3306, 28-3315, 28-3320, 13-707 and 13-892 committed on April 1, 2001. Mr. James was also found guilty of Count 3¹, a class 1 misdemeanor, nondangerous, nonrepetitive offense, in violation of A.R.S. §§ 13-3401, 13-3405, 13-3418, 13-707, 13-802 and 13-901.01, committed on April 1, 2001.

14. The Court imposed suspension of sentence for a period of two years and placed Mr. James on probation under the supervision of the Adult Probation Department. Mr. James was ordered to be incarcerated in the Maricopa County Jail for ten days with all but twenty-four consecutive hours of the ten-day term to be suspended upon successful completion of an alcohol/drug screening, counseling, education and/or treatment program. Mr. James was ordered to pay a monthly probation fee of \$25.00, to pay fines totaling \$1,770.00, to pay an assessment of \$40.00 and pay a \$40.00 time payment fee.

15. On December 29, 2004, in *State of Arizona v. D'Metrid James*, Maricopa County Superior Court No. CR2041-039456-001 SE, Mr. James was found guilty of Count 1: Aggravated Driving or Actual Physical Control While Under the Influence of Intoxicating Liquor or Drugs, a class 4 felony, nondangerous and nonrepetitive offense, in violation of A.R.S. §§ 28-1381(A)(1), 28-2383(A)(1), 28-3001, 28-3304, 28-3305, 28-3315, 28-1383J, 28-1444, 28-1461, 13-701, 13-702, 13-702.01 and 13-801, committed on May 17, 2004.

16. The Court sentenced Mr. James to a four-month term with the Arizona Department of Corrections to commence on December 29, 2004 with presentence credit of thirty-four days, and imposed three years probation upon his release from prison. The Court ordered Mr. James to pay a

¹It is noted that the statutory provisions of law cited in Mr. James' December 5, 2001 Possession of Marijuana conviction are the same as listed in the January 23, 2001 conviction of Count 3, and Mr. James' testimony that he has two convictions for Possession of Marijuana causes the Administrative Law Judge to conclude that the Count 3 conviction was for possession of marijuana.

monthly probation fee of \$50.00, to pay a \$750.00 fine, to pay a \$20.00 time payment fee with a \$5.00 probation surcharge, to pay a \$250.00 DUI abatement fee and to pay \$1,500.00 to the Prison Construction and Operations Fund. Mr. James was ordered not to consume or drink any substance containing alcohol and to participate and cooperate in any counseling or assistance as directed by the Adult Probation Department.

17. It is undisputed that with respect to CR2041-039456-001 SE, Mr. James is currently on probation, which will expire December 29, 2007.

18. Deborah Pearson ("Ms. Pearson"), the Board's Executive Director testified that she was present at both the Application Committee meeting and the Board meeting when discussion was held and consideration given to the Application.

19. Ms. Pearson testified that the Application Committee found the Application to be administratively complete. The Committee also found that Mr. James had completed the requisite appraisal education credits and submitted the necessary appraisal hours of experience and had submitted three appraisals, which are required to be in compliance with the *Uniform Standards of Professional Appraisal Practice*.

20. Ms. Pearson was not involved in the decision-making process but relayed the Board's decision to Mr. James via the letter dated April 21, 2006. See Exhibit 4.

21. Ms. Pearson testified that the Board believed that the Aggravated DUI felony conviction impacted Mr. James' reputation and based on his criminal history, the Board had concerns Mr. James may still have a substance abuse problem, which could potentially impact his ability to develop and communicate appraisals. The Board voted unanimously to deny the Application.

22. Ms. Pearson testified that the Board interpreted Mr. James' felony conviction, his pattern of conduct, and ongoing probation as evidence of a bad reputation which the Board felt required denial of the Application in order to protect the public. According to Ms. Pearson, there was no information other than the criminal convictions to indicate that Mr. James had a substance abuse problem.

23. Mr. James testified that:

a. At the time when he committed the actions underlying the above-mentioned convictions he had a substance abuse problem.

b. Today he is a different person than he was when he committed the acts underlying the above-mentioned convictions and he no longer has a substance abuse problem.

c. He took responsibility for the criminal activities he committed.

d. With respect to the Aggravated DUI, he was assigned pretrial services and received substance abuse testing. During that time, he underwent between five and ten drug tests, the results of which were negative.

e. At sentencing for the Aggravated DUI, he was placed on probation and served four months at DUI Camp. While at the DUI Camp, he underwent intensive substance abuse counseling.

f. He has not had any probation violations.

g. He attended after-care substance abuse counseling. He went to two weekends of substance abuse counseling with a therapist, he attended a victims' impact panel and had but ten random drug tests. All of the drug tests have had negative results.

- h. He has been drug and alcohol free for over two years.
 - i. He has been working towards becoming an appraiser for eight years.
 - j. During the eight years he worked under an apprenticeship with a mentor, he never had a problem in developing or communicating an appraisal.
 - k. He has been employed by Totten Tubes for two years, a steel distribution company, where he acts as an office assistant. In that capacity, he handles inside sales. Previously, he worked at Burger King.
 - l. Other than having to take time off from work because of having to go to DUI Camp, his criminal history has not affected his employment at Totten Tubes.
 - m. He informed his supervisor at Totten Tubes of his criminal convictions. He has also told members of the public, family and friends of the criminal history. Therefore, he has no reason to believe he has a bad reputation.
24. Mr. James presented two character witnesses on his behalf: a) Patrick Hale ("Mr. Hale") the branch manager at Totten Tubes and his immediate supervisor; and b) Robert Marconi ("Mr. Marconi"), an outside salesperson contracted with Totten Tubes. Those witnesses testified as to Mr. James' honesty, truthfulness and good reputation.
25. Mr. Hale testified:
- a. He shares an office with Mr. James and sees him at least eight hours a day, five times a week.
 - b. He has never seen Mr. James come to work showing signs of having used illegal substances or of exhibiting a substance abuse problem.
 - c. He hired Mr. James on a temporary basis through an agency. Before Mr. James was hired on a permanent basis, Mr. James disclosed his criminal history.
 - d. There is nothing concerning Mr. James' work product that indicates he has a substance abuse problem.
 - e. Because of DUI Camp, he put Mr. James on a leave of absence and let the owners know of the situation. The owners decided to keep Mr. James hired in the inside sales position he currently holds.
 - f. Mr. James has exhibited integrity and has been truthful to him. He believes Mr. James is a very good person who has a good reputation.
26. Mr. Marconi testified:
- a. He works with Mr. James and has contact with him by telephone on a regular basis and comes to the office where Mr. James works about three days a week.
 - b. He has worked closely with Mr. James for about one and a half years and there has not been any indication that Mr. James was under the influence of alcohol or drugs.
 - c. He is aware that Totten Tubes' customers like Mr. James and believes Mr. James has a good reputation.
 - d. He believes Mr. James is a "fine gentleman" who made a mistake. He would not hesitate to use him as an appraiser if Mr. James becomes licensed.

Myra Jefferson seconded the motion. The Board voted unanimously in favor of the motion. Sarah Vetault moved that the Board accept the Administrative Law Judge's Conclusions of Law 1-13, inclusive, with the correction of typographical errors, to read as follows:

CONCLUSIONS OF LAW

1. Mr. James bears the burden of proof and the standard of proof on all issues is by a preponderance of the evidence. Pursuant to A.R.S. § 41-1092.07(G)(1), Applicant has the burden of proving his eligibility for licensure as a licensed real estate appraiser. A.A.C. R2-19-119.

2. A preponderance of the evidence is "evidence of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not." Black's Law Dictionary 1182 (6th ed. 1990).

3. The evidence of record established that Mr. James has been convicted of a felony within the meaning of A.R.S. § 32-3611(D)(4).

4. Mr. James claims to be a different person from the past, he has the burden of establishing that fact. Mr. James argued that through his testimony and the testimony of character witnesses that he is a person of good reputation, that he does not have a substance abuse problem and that he has the requisite qualifications to hold a real estate appraiser's license.

5. The activities underlying the 2001 convictions occurred more than five years ago. In 2004, Mr. James drove a motor vehicle while his driver's license was suspended and he was in an intoxicated state. Mr. James argued that the presentence investigation report incorrectly stated that he had an alcohol problem and referred to the prior 2001 DUI conviction, which Mr. James asserts did not involve alcohol. However, Mr. James did not address the fact that he drove a motor vehicle when he should not have done so due to the suspension of his license and drove the vehicle while in an impaired condition.

6. Mr. James is a felon and that, in and of itself, impacts negatively on his reputation. Although there have been no probation violations, Mr. James is currently on probation until December 2007. The fact that the Court decided a probationary term of three years for Mr. James indicates that the Court believed it would take at least three years of good behavior before Mr. James can resume activities without supervision.

7. Mr. James' criminal history shows a pattern of conduct of one who has a substance abuse problem. There is evidence that Mr. James has been drug free for two years and has undergone counseling. However, the counseling was required by the Court and Mr. James is still under probation and is subject to random drug testing.

8. The testimony of Mr. Hale, Mr. Marconi and of Mr. James were considered and given weight.

9. It is difficult to determine how much time has to pass in order to conclude that a person with a criminal history is rehabilitated. In the instant matter, the weight of the evidence established that Mr. James has embarked on a course of conduct of rehabilitation as evidenced by his work history.

10. Under the circumstances, at this point in time, Mr. James has not sufficiently demonstrated that he is fully rehabilitated but has demonstrated a concerted effort toward that goal.

11. The weight of the evidence of record established that the Board had sufficient grounds to deny the Application pursuant to A.R.S. §§ 32-3611(D) and 32-3631(A)(4) and has exercised that discretion in a reasonable manner.

12. Given Mr. James' criminal history, which shows a pattern of conduct involving substance abuse, that Mr. James' felony conviction was fairly recent and he is still on probation, not enough time has passed for Mr. James to have sufficiently established that he is a person of good reputation and he has not sufficiently shown that he no longer has a substance abuse problem.

13. Mr. James has failed to prove by a preponderance of the evidence that, at this point in time, the Board's denial of the Application should be reversed.

Myra Jefferson seconded the motion. The Board voted unanimously in favor of the motion. Tom Heineman moved that the Board accept the Administrative Law Judge's Order, to read as follows:

ORDER OF DENIAL OF APPLICATION

In issuing this order, the Board considers its burden to protect the public welfare and safety, as well as all aggravating and mitigating factors presented in the case. Based on the foregoing Findings of Fact and Conclusions of Law, the Board upholds its earlier denial of Application No. 5894 for certification as a licensed real estate appraiser submitted by D'Metrid R. James.

RIGHT TO PETITION FOR REHEARING OR REVIEW

Applicant is hereby notified that he has the right to petition for a rehearing or review. Pursuant to A.R.S. § 41-1092.09, as amended, the petition for rehearing or review must be filed with the Board's Executive Director within thirty (30) days after service of this Order and pursuant to A.A.C. R4-46-303, it must set forth legally sufficient reasons for granting a rehearing or review. Service of this order is effective five (5) days after mailing. If a motion for rehearing or review is not filed, the Board's Order becomes effective thirty-five (35) days after it is mailed to Applicant.

Applicant is further notified that the filing of a motion for rehearing or review is required to preserve any rights of appeal to the Superior Court.

Rod Bolden seconded the motion. The Board voted unanimously in favor of the motion.

Review and Action Concerning Issues Dealing With Formal Hearing Concerning 06F-11033-BOA, Randolph W. Buckingham.

Respondent did not appear but was represented by his attorney, Tina M. Ezzell, Esq. Elizabeth A. Campbell, Assistant Attorney General, represented the State of Arizona. Christina Cassetta, Assistant Attorney General, Solicitor General's office, advised the Board. The Board, having reviewed the record, heard oral argument on behalf of the parties. Myra Jefferson moved that the Board accept the Administrative Law Judge's Findings of Fact 1-24. Sarah Vetault seconded the motion. The Board voted unanimously in favor of the motion. Lee Ann Elliott moved that the Board reconsider its prior motion. Tom Heineman seconded the motion. The Board voted unanimously in favor of the motion. Sarah Vetault moved that the Board modify the Administrative Law Judge's Findings of Fact (by deleting Finding of Fact 24 because it is incorrect) to read as follows:

FINDINGS OF FACT

1. The Arizona State Board of Appraisal ("Board") is the authority for licensing, certifying

and regulating the practice of real estate appraisal in the State of Arizona.

2. Randolph W. Buckingham ("applicant") is the holder of License No. 11033, which permits applicant to practice as a licensed real estate appraiser in the State of Arizona. Applicant was licensed on February 11, 2004.

3. Applicant is also the holder of Real Estate Appraiser License No. AL006492 issued by the Office of Real Estate Appraisers of the State of California ("OREA"). Applicant's California license was issued on or about March 3, 1994 and renewed on June 30, 2006. Applicant is also licensed in the State of Nevada.

4. On or about March 27, 2001, OREA issued a citation against applicant in OREA Case No. C 000905-01. OREA made the following findings in response to a complaint against applicant received by OREA:

a. The Respondent misrepresented the subject's condition and effective age. The subject has an actual age of 13 years and was reported to be in average condition with an effective age of five, despite numerous items of deferred maintenance and disrepair. The result was a misleading appraisal report and an overstated value conclusion (S.R. 1-1(b), 1-2(e)(i), 2-1(a) and Conduct section of the Ethics Rule);

b. The Respondent failed to disclose that the photographs of the subject property were from an appraisal performed over two years prior (S.R. 1-1(b), 2-1(a) and Conduct section of the Ethics Rule);

c. The Respondent failed to adequately account for physical and external depreciation in the Cost Approach. At eight percent, the rate of physical depreciation appears to consider only nominal wear and tear. External depreciation was identified in other sections of the report, including a \$25,000 adjustment in the Sales Comparison Approach, but was omitted in the Cost Approach (S.R. 1-1(b) and 1-4(b)(iii));

d. The Respondent failed to adequately analyze and report available sales data and to provide the data and reasoning to support his conclusions. Comparable Sale #1 had four bedrooms and two and a half baths. The Respondent reported only three bedrooms and one bath for this sale. Comparable Sale #2 had a spa that was not accounted for. Comparable #3 appears to have been arbitrarily adjusted upward \$25,000 for quality; however, no supporting data or reasoning is provided. Additionally, this property appears slightly superior in quality based on the photo addendum and the description provided in MLS. None of the Comparable Sales were appropriately adjusted for the subject's condition (S.R. 1-1(c), 1-4(a), and 2-2(b)(ix));

e. The Respondent failed to identify the user(s) of the appraisal report (S.R. 1-2(b), and 2-2(ii)); and

f. The Respondent failed to identify the use of the appraisal report (S.R. 1-2(a) and 2-2(i)).

5. OREA issued applicant a Private Reprimand. The OREA Decision provided for the following regarding the Private Reprimand:

The Private Reprimand will not be made public by the Office, unless otherwise required by law, so long as Respondent completes the terms and conditions of this Citation by the dates specified herein. The Complainant will be notified of the outcome of this matter, and the terms issued by this Citation may be provided to another licensing agency if Respondent applies for licensure with that entity.

6. OREA contemplated that the terms of the Citation, including the Private Reprimand, could be provided to another licensing agency.

7. Applicant complied with the terms of the Private Reproval.

8. By letter dated August 9, 2005, Deborah G. Pearson, the Board's Executive Director, advised applicant that the Board had recently received a complaint against him. The complainant, Alec Coughlin of Premier Bank in Overland Park, Kansas had submitted a complaint to the Board regarding an appraisal report prepared by applicant for a property located at 3550 S. Warner Drive, Apache Junction, Arizona. The Board requested that applicant "respond to the complaint in writing within the next 30 days" and to "respond to each issue identified in the complaint."¹ Mr. Coughlin subsequently sent the appraisal report at issue to the Board.

9. By letter dated August 18, 2005, Randy Mackay, a Senior Property Appraiser Investigator for OREA, advised applicant that OREA was "currently reviewing a complaint filed against you alleging violations of the Uniform Standards of Professional Appraisal Practice." Applicant was requested to submit documentation regarding a March 25, 2004 appraisal report for a property located at 1121 East 22nd Street, Los Angeles, California.

10. By letter dated September 7, 2005, applicant responded to Mr. MacKay's letter and requested that OREA provide him with a copy of the complaint that had been filed.

11. By letter dated September 19, 2005, applicant submitted copies of the appraisal reports and work file for the March 25, 2004 appraisal report.

12. By letter dated September 13, 2005, applicant belatedly responded to Ms. Pearson's August 9, 2005 letter.² In his response, applicant stated that he has "reviewed the complaint."

13. On or about October 5, 2005, applicant filed an Application for State Certified Residential Real Estate Appraiser with the Board.

14. In his Application for State Certified Residential Real Estate Appraiser, applicant answered "No" to question number 16, which reads: "Have you ever had any complaints regarding appraisals filed against you, regardless of the outcome?"

15. Applicant signed the following Verification By Oath or Affirmation at the end of his October 5, 2005 application:

I have read the questions in the foregoing application and have answered them completely and truthfully to the best of my knowledge. I know no reason why this application should not be granted and further extend this verification to cover all amendments and attachments to this application or further statements to the Board in response to inquiries concerning my qualifications as an applicant for state licensed appraiser or state certified appraiser.

I agree to sign any release documentation deemed necessary by the Board to investigate, confirm or verify the information contained in this application.

I have read, understand, and pledge that I will comply with Chapter 36, Title 32, A.R.S. and the Arizona Board of Appraisal (sic) Rules.

I pledge to comply with the Uniform Standards of Professional Appraisal Practice, and understand the

¹Mr. Coughlin subsequently sent the appraisal report at issue to the Board.

²Applicant's response was due on or before September 8, 2005.

types of misconduct for which disciplinary proceedings may be initiated against state certified appraisers.

I certify under penalty of perjury, under the laws of the State of Arizona, that the foregoing answers and statements given in this application are true and correct. I certify that at the time of the issuance of a certificate I will be 18 years of age or older.

16. By letter dated October 21, 2005, Ms. Pearson advised applicant that the Board had denied his October 5, 2005 application because he answered "No" to question number 16 of the application and because he failed to disclose the pending complaints in Arizona and California, and the Private Reproval action taken by OREA. The Board denied applicant's application pursuant to A.R.S. §§ 32-3611(D), 32-3631(A)(1) and 32-3631(A)(5). Applicant was informed of his right to appeal the Board's denial.

17. Applicant did not appeal the Board's denial of his application for certification.

18. At the hearing in this matter, applicant testified that he still believes that he answered question number 16 correctly.

19. On February 17, 2006, applicant filed a Biennial Renewal Application for his Residential Appraiser License. Applicant answered "Yes" to question number 13, which read: "Are there any pending complaints or completed adverse actions against you with regard to any licenses, certificates, or permits to practice any regulated profession, occupation, or vocation?"

20. Applicant placed an asterisk next to his answer to question number 13, indicating that he had attached an "objection and statement." In his attachment, applicant contends that the phrase "pending complaints" is "vague, ambiguous and unintelligible." He contends that the term "complaint" refers to "the initiation of a formal disciplinary proceeding by the Board of Appraisal or other governing body against a license or certificate holder." In support of that position, applicant noted a portion of the paragraph preceding questions 10-13, which reads, in part: "For Disciplinary Action, **CERTIFIED** copy of (1) Notice of Hearing and Complaint; (2) Answer; (3) Findings of Fact and Conclusions of Law (4) Final Order/Administrative Ruling; (5) Consent or Settlement Agreement; (6) Certified License/Certificate History from each state in which applicant is licensed/ certified at the time of the application.: (Emphasis in the original.)

21. In reliance of the foregoing language, applicant contends that the complaints pending at the time with the Board and OREA were grievances and not complaints.³ Further, applicant contends the OREA Private Reproval was not to be made public if he timely complied with the terms and conditions of the Private Reproval. However, Applicant failed to note the Private Reproval provides that it could be disclosed to a licensing agency.

22. At its March 16, 2006 meeting, the Board voted to deny the renewal of applicant's appraisal license. The basis of the Board's denial was Applicant's negative answer to question number 16 of his October 5, 2005 certification application.

23. Applicant's California appraisal license has been recently renewed by OREA.

³The terms "grievance" and "grievances" are not terms defined by the rules or statutes applicable to OREA or the Board.

Gabe Corral seconded the motion. The Board voted unanimously in favor of the motion. Lee Ann Elliott moved that the Board modify the Administrative Law Judge's Conclusions of Law by deleting Conclusion of Law 11 (the Board determined Substantive Policy Statement #1 applies only to the resolution of complaints) to read as follows:

CONCLUSIONS OF LAW

1. The Board has jurisdiction over Respondent and the subject matter in this case.
2. Pursuant to A.R.S. § 41-1092.07(H), the Board has the burden of proof in this matter. The standard of proof is a preponderance of the evidence. A.A.C. R2-19-119(A).
3. The term "complaint," as used in applicant's October 3, 2005 application for certification, is defined by A.A.C. R4-46-101, which reads: "Complaint' means a written communication to the Board that meets the minimum criteria established in R4-46-301(A)(1) and alleges violations of A.R.S. Title 32, Chapter 36 or this Chapter."
4. The minimum criteria established in A.A.C. R4-46-301 are:
 - a. The name of the respondent against whom allegations are being made;
 - b. The action that is the basis of the complaint;
 - c. The time-frame in which the action occurred;
 - d. Each violation alleged to have been committed by the respondent; and
 - e. A copy of the report, if the complaint includes allegations concerning an appraisal, consulting assignment, or property tax appeal.
5. The term "formal complaint" is defined by A.A.C. R4-46-101, which reads: "Formal complaint' means a notice of allegations issued by the Board under R4-46-302."
6. A.A.C. R4-46-302 provides that the Board "shall issue a notice of hearing and formal complaint for formal disciplinary proceedings" if the following elements are present:
 - a. After an informal hearing, the Board determines that suspension or revocation may be warranted;
 - b. The respondent is aggrieved by the Board's decision in an informal hearing; or
 - c. After completing its investigation, the Board finds that suspension or revocation may be warranted.
7. Applying the foregoing authorities, it is concluded that the term "complaint," as defined by rule, used in applicant's October 5, 2005 certification application, is not a vague or ambiguous term and does not equate to the term "formal complaint," as asserted by applicant. Therefore, applicant was required to disclose Mr. Coughlin's complaint in his October 5, 2005 certification application.
8. The evidence of record is adequate to establish that applicant violated the provisions of A.R.S. § 32-3611(D) because he provided false information about prior and pending complaints when he answered "No" to question number 16 of his October 5, 2005 certification application requesting such information.
9. The evidence of record is adequate to establish that applicant violated the provisions of A.R.S. § 32-3631(A)(1) as a result of applicant making a knowing false statement in answering his October 5, 2005 certification application.
10. The evidence of record is adequate to establish that applicant violated the provisions

of A.R.S. § 32-3631(A)(5) as a result of applicant's act or omission by knowingly making a false statement, submitting false information, refusing to provide complete information and misrepresenting his professional complaint history in his application for certification.

Tom Heineman seconded the motion. The Board voted unanimously in favor of the motion. Rod Bolden moved that the Board modify the Administrative Law Judge's Order (The Board determined its only legal options when considering an application/renewal are to grant or deny the license or renewal) to read as follows:

ORDER OF DENIAL OF APPLICATION

In issuing this order, the Board considers its burden to protect the public welfare and safety, as well as all aggravating and mitigating factors presented in the case. Based on the foregoing Findings of Fact and Conclusions of Law, the Board upholds its earlier denial of the Biennial Renewal Application of License No. 11033 submitted by Randolph W. Buckingham.

RIGHT TO PETITION FOR REHEARING OR REVIEW

Applicant is hereby notified that he has the right to petition for a rehearing or review. Pursuant to A.R.S. § 41-1092.09, as amended, the petition for rehearing or review must be filed with the Board's Executive Director within thirty (30) days after service of this Order and pursuant to A.A.C. R4-46-303, it must set forth legally sufficient reasons for granting a rehearing or review. Service of this order is effective five (5) days after mailing. If a motion for rehearing or review is not filed, the Board's Order becomes effective thirty-five (35) days after it is mailed to Applicant.

Applicant is further notified that the filing of a motion for rehearing or review is required to preserve any rights of appeal to the Superior Court.

Gabe Corral seconded the motion. The Board voted unanimously in favor of the motion.

Christine Cassetta left the meeting.

RULES AND REGULATIONS COMMITTEE REPORT

Jay A. Josephs, Certified Residential Appraiser, spoke against the Board's requirement that an appraiser must be licensed or certified for at least four years before he can act as a supervising appraiser, which was adopted in 2005 and not a current amendment to the rules. Lee Ann Elliott moved that the Board approve the proposed amendments to the rules, as revised, to be filed with the Governor's Regulatory Review Council (GRRC) for its approval. Gabe Corral seconded the motion. The Board voted unanimously in favor of the motion. Sarah Vetault moved that the Board approve the proposed amendments to the statutes, as revised, to be filed with the Legislature for enactment. Tom Heineman seconded the motion. The Board voted unanimously in favor of the motion.

ADJOURNMENT

The meeting was adjourned.

Lester G. Abrams, Chairperson